Vol 3 No 11

APRIL 1897

CASE & COMMENT

MONTHLY

Per year 50 cents Per number 5 cents

Entered at the postoffice at Rochester N Y as second class matter by
THE LAWYERS' CO-OPERATIVE PUBLISHING COMPANY

Smith on Receiverships

We present for your consideration a work written *de novo*, with especial reference to lawyers' needs, by an able and conscientious lawyer. A large experience in Receivership cases disclosed to him the need of fresh treatment of the subject from a new view-point. It is the result of years of labor in the search for and study of cases, all of which are set out in the notes.

It is the only up-to-date work on the subject. It gives all cases up to Feb. 1, '97 and *cites* 1000 *pertinent cases not referred to in any other text-book.* It gives the only separate and exhaustive treatment of the subject of Procedure, and 72 Forms which have stood the test of use.

Published by the Lawyers' Co-Operative Publishing Co, Rochester, N Y and Rand-McNally Bldg Chicago, and sold by the trade generally. Price $6 net.

RICE
ON THE
Law of Evidence
3 vols $15
(4th edition)

THIS, the latest and most conspicuous success in modern legal textbooks, is not a classic, or intended as such; not juridical history, or metaphysical refinements, but a modern tool for working lawyers, consistent, homogeneous, and practically useful every day.

Divided into two parts, Vols. 1 and 2, $10, treat on CIVIL EVIDENCE, and Vol. 3, $6, on CRIMINAL EVIDENCE, and its 23,000 citations cover every point of the law on the subject. The busy lawyer wants a precedent for each point he makes, and that is what this work furnishes.

Several noted modern cases involving nice questions in evidence are treated *in extenso*.

THE LAWYERS' CO-OPERATIVE PUBLISHING COMPANY
ROCHESTER NEW YORK

There are two current Digests offered. One digests *all* publications, gives the points of law decided in *all* cases, American and English, with *all* citations, *all* official and *all* others—the other, headnotes to cases in its publishers' reporters, with some others, giving all reporter citations, with some others.

Which do you want?

The GENERAL DIGEST, American and English, is the first. The current volume will be sent you if you wish, on approval. Examine, test and compare the digesting, case by case. Take a month to do it. If you don't like it return it. But thorough comparison never failed to demonstrate the all-around superiority of the GENERAL DIGEST.

THE LAWYERS' CO-OPERATIVE PUBLISHING COMPANY
ROCHESTER NEW YORK

We will send you, free, the latest and best edition of **Blackstone's Commentaries,** (Lewis') bound in best law sheep, if you will give us only a little of your time and effort.

Send us three new subscribers to the GENERAL DIGEST, Quarterly, at $4 and it's yours. This digest gives the most for the money of any law book, and therefore sells on sight.

Write for particulars.

THE LAWYERS' CO-OPERATIVE PUBLISHING COMPANY
ROCHESTER N Y

A LIST OF SPECIAL BARGAINS.

The Lawyers Co-Operative Publishing Co., Rochester, N. Y. offers the following standard second-hand law book bargains.

List 20. Terms: Cash, net.

	Original Price, New	Our Price Good S.H.
AMERICAN CRIMINAL REPORTS, 8 vols.	$40.00	$20.00
AMERICAN CORPORATION CASES, 9 vols.	45.00	5.00
AMERICAN RAILWAY CASES, Smith & Bates, 2 vols., 1854,	10.00	1.00
CHITTY, CRIMINAL LAW, 4th Am. ed., 3 vols., 1836.	15.00	3.00
ELLIOTT, GENERAL PRACTICE, 2 vols.	12.00	8.00
FIELD, LAWYERS' BRIEFS, 6 vols. 1884.	33.00	9.00
FOOTE & EVERETT, LAW OF INCORPORATED Co's, 3 vols. 1892,	15.00	6.00
HUTCHINSON ON CARRIERS, 1879,	6.00	1.00
KENT, COMMENTARIES, 13th ed., 4 vols. 1884,	12.00	8.50
REDFIELD ON RAILWAYS, 5th ed., 2 vols., 1873.	12.00	2.00
SHARSWOOD & BUDD LEAD. CASES REAL PROPERTY, 4 vols. 1882,	24.00	8.00
TAYLOR ON EVIDENCE, Am. ed. 2 vols., 1887.	10.00	3.00
WAIT, ACTIONS AND DEFENCES, 9 vols. to 1894.	45.00	20.00
WHARTON, INTERNATIONAL LAW DIGEST, 2nd ed., 3 vols., 1887,	12.00	5.00

All books guaranteed in satisfactory second-hand condition.

J. M. Woolworth

PORTRAIT SUPPLEMENT. — "CASE AND COMMENT."
THE LAWYERS CO-OPERATIVE PUBLISHING CO.,
ROCHESTER, N. Y.
NEW YORK: 177 BROADWAY BOSTON: 10 TREMONT ST. CHICAGO: RAND-MCNALLY BLDG.

Case and Comment

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS
INDEX TO ANNOTATION OF THE LAWYERS' REPORTS, ANNOTATED
LEGAL NEWS NOTES AND FACETIÆ

VOL. 3 APRIL, 1897 No. 11

CASE AND COMMENT

Monthly. Subscription, 50 cents per annum postpaid. Single numbers, 5 cents.

THE LAWYERS' CO-OPERATIVE PUB. CO.,
Rochester, N. Y.

Branch Offices: New York, 177 Broadway. Chicago, Rand-McNally Bldg. Boston, 10 Tremont Street.

Entered at postoffice at Rochester, N. Y., as second-class mail matter.

James M. Woolworth.

The president of the American Bar Association elected at Saratoga in August, 1896, is James M. Woolworth, who for forty years has been engaged in the practice of law at Omaha, Neb., and who has long been eminent far beyond his own state.

Mr. Woolworth was born in Onondaga Valley, New York, in 1829. His father, Samuel Buel Woolworth, LL. D., spent his life in educational work and was for many years secretary of the Board of Regents of the State of New York. The name of the family is an old one and is perpetuated in some parts of England. An old church in Wales stands dedicated to St. Mary Woolworth, and there was formerly one of the same name in London.

After graduating from Hamilton College at the age of twenty, Mr. Woolworth began to study law. In 1854 he was admitted to the bar and commenced practicing at Syracuse, N. Y., but went to Omaha in October, 1856. His rise in his profession was rapid. He was the first city attorney of Omaha. For one session he was in the legislature, but the temptation to political life did not draw him away from the practice of the law. In 1871 he was a member of the Constitutional Convention. In 1873 he was the Democratic candidate for chief justice of the Supreme Court. He was admitted to practice before the Supreme Court of the United States in 1862, before any justice now on the bench of that court had taken his seat. From that time until now Mr. Woolworth has been a familiar figure in that court as well as in the other Federal courts and in the state courts, appearing in a great variety of important cases.

Outside of his professional duties Mr. Woolworth has found time to do much that is of public interest. He has been regent of the high school, trustee of Brownell Hall (a female seminary in Omaha), and also of Racine College, Wis. In addition to his large law library he has made a very admirable and costly collection of the best books in the various departments of literature.

His writings and addresses comprise many subjects. Among other publications are a Handbook of Nebraska Territory, Vols. I. and II. of the Nebraska State Reports, and one volume of the United States Circuit Court Reports for the 8th Circuit. Among his addresses are those made before the Iowa State University, Hamilton College, Nebraska State Historical Society, Nebraska Bar Association, Iowa Bar Association, Iowa University Law School, and the American Bar Association. One address before the latter was made in 1889 on "Jurisprudence Considered as a Branch of the Social Science." Another was made in 1896 on the "Development of the Law of Contracts." His literary style is clear and polished.

The degree of LL. D. was conferred upon him in 1875 by Racine College. The degree of L. H. D. was given him in 1892 by the

University of Nebraska, and the degree of D. C. L. in 1890 by Trinity University, Toronto, Can.

Mr. Woolworth is especially prominent in the work of the Episcopal Church. He has not only been a vestryman of Trinity Cathedral for nearly twenty-two years, but also chancellor of the diocese of Nebraska, a lay delegate to the General Convention of the church, and a member of its committee on revision of the liturgy and of the constitution, and other leading committees. He has often been sought for addresses on church matters, and has written a much-prized work on "The Cathedral in America."

Mr. Woolworth has been twice married. Miss Helen Beggs, of Syracuse, N. Y., became his first wife, and his second marriage was to Miss Elizabeth S. Butterfield, of Omaha. He has three children.

Of much experience in the law, wide learning, ripe culture, and high character, Mr. Woolworth is a worthy successor of the honored men who have preceded him in the line of presidents of the American Bar Association.

A Test of Statesmanship.

An opportunity to participate in a deed of world-wide and lasting beneficence rarely comes to men, and then may not be recognized. But it has come now to the senators of the United States. By one simple act they can advance the welfare of the world. Until the present time the development of human society and government out of the primeval savagery has been fragmentary and local. The sovereignty of order, law, and justice, even in the best nations, has been limited to domestic and local affairs, leaving all international matters to the conflicts of craft and violence. A treaty of general arbitration between the United States and Great Britain would through all the coming centuries mark the first full emergence of the leading nations out of the lawless barbarism of international bullying and butchery into the peaceful domain of law.

A failure of the United States Senate to ratify the treaty now pending would show the world that this nation (or at least the Senate which represents it in this matter) is yet below the level of England in civilization.

Worth the Market Price.

"It is a cardinal rule which should never be forgotten, that whatever property is worth for the purposes of income and sale it is also worth for purposes of taxation," says Mr. Justice Brewer in a pithy opinion denying a rehearing of the Ohio and Indiana Express Tax Cases. The opinion closes as follows: "In the city of New York are located the headquarters of a corporation whose corporate property is confessedly of the value of $16,000,000, a value which can be realized by its stockholders at any moment they see fit. Its tangible property and its business are scattered through many states all whose powers are invoked to protect its property from trespass and secure it in the peaceful transaction of its widely dispersed business. Yet because that tangible property is only $4,000,000 we are told that this is the limit of the taxing power of these states. In other words, it asks these states to protect property which to it is of the value of $16,000,000, but is willing to pay taxes only on the basis of a valuation of $4,000,000. The injustice of this speaks for itself.

"In conclusion let us say that this is eminently a practical age; that courts must recognize things as they are and as possessing a value which is accorded to them in the markets of the world; and that no fine-spun theories about situs should interfere to enable these large corporations, whose business is of necessity carried on through many states, to escape from bearing in each state such burden of taxation as a fair distribution of the actual value of their property among those states requires."

"The Whim of a Legislature."

A question as to the power of a legislature to determine what shall be deemed a crime is in reality only a question of the power of the courts to declare a statute unconstitutional and void. That power seems to be thought by many persons to be so extensive that any unwise, unreasonable, or oppressive law may be declared by the courts to be void. Something of this idea appears in "The Evening Post," in discussing the late decision of the United States Supreme Court enforcing the act of Congress against the Trans-Missouri Joint Traffic Association. It says on this point, in reference to the explanation of the decision given by the majority and minority judges: "Judge Peckham says that Congress can make

any interstate commerce contract a crime which restrains trade even reasonably, and Judge White says that inasmuch as every contract restrains trade in so far as it is held binding, this means that Congress may make the whole fabric of interstate commerce a network of crime. The reasoning thus explained obviously needs revision somewhere, unless indeed we are to adopt the view that law consists of a body of arbitrary orders or edicts founded upon nothing but the whim of a legislature."

But the power of a court to declare a statute void must be limited to statutes which conflict with specific constitutional provisions, or else the court is in effect given a veto power on legislation. The functions of government possessed by the legislative department include the power to declare any act which is contrary to the public welfare to be a punishable offense, or, in the broad sense of the word, a crime. What the public welfare requires, as, for instance, in respect to the permission or prohibition of contracts in restraint of trade, must be decided either by the legislative department or by the courts. It seems too plain for argument that it is for the legislature rather than the judiciary to declare public policy.

Much popular misconception, such as that shown by "The Evening Post," is due to an unconscious misapplication of the maxim that every wrong has a remedy; but the only remedy for a wrong act of the legislature, unless it violates a constitutional provision, is the repeal of the act. Even the whim of a legislature may become law if the Constitution is not violated.

Presumed Wishes of a Lunatic.

It is a delicate matter for a court to authorize the expenditure of a lunatic's property to carry out his presumed wishes in the absence of any legal obligation. Yet it is plain enough that in some cases a refusal to do so might work scandalous injustice and do undoubted violence to the purposes often expressed by the owner while sane. A good illustration of this appears in the New Jersey case of Potter v. Berry, where it was held that a daughter of a lunatic who, while he was sane, had placed her in the possession and given her the free enjoyment of premises which he devised to her by a will that remains unrevoked would be protected by a court of equity, after her father becomes insane, from an attempt of his guardian to assert the father's legal title to the premises and oust her from possession. To permit such a frustration of the father's incomplete gift after he had become powerless to complete it or even to protest against its repudiation by his guardian would do such violence to his intention and parental feeling as to shock the sense of right and give an added horror to the loss of reason. But until he obtained the decision the guardian might naturally ask if the law would not compel him to enforce the father's title and account for the use of the premises as a part of the lunatic's estate.

The question is somewhat nice, but it is gratifying to see that the trend of the decisions on the subject, which appear in a note to this case in 34 L. R. A. 297, clearly sustains the reasonable use of the lunatic's property, even in the absence of any legal liability, for carrying out his presumed wishes and fulfilling his equitable obligations when they are fairly established.

Index to Notes

IN

LAWYERS' REPORTS, ANNOTATED.

Book 34, Parts 4, 5, and 6.

Mentioning only complete notes therein contained, without including mere reference notes to earlier annotations.

The part containing any note indexed will be sent with Case and Comment for one year for $1.

Among the New Decisions.

Banks.

Fraud in receiving a deposit of checks or drafts after bank officials knew that it was insolvent is held, in Bruner *v.* First Nat. Bank (Tenn.) 34 L. R. A. 532, insufficient to give the depositor a preferential claim against assets in the hands of a receiver of the bank, if the bank before its failure had received the proceeds of such paper or credit therefor from a correspondent, although the bank had on hand when it failed and always after the deposits were made more than the amount thereof in cash.

A credit for a draft given by one bank to another on the same day that the latter failed was held, in Klepper *v.* Cox (Tenn.) 34 L. R. A. 536, to raise no presumption, in the absence of proof, that it was given after the failure, in order to entitle one who had deposited the draft in the insolvent bank after its officers knew it was insolvent to reclaim proceeds of the draft out of the assets in preference to other creditors who seek to have them distributed *pro rata*.

Bills and Notes.

The indorsement of a firm name on a note to the firm by one partner, made in his handwriting, and the fact that he discounted the note to his own credit in a bank, are held, in Brown *v.* Pettit (Pa.) 34 L. R. A. 723, to be sufficient to put the banker upon inquiry and prevent him from being a bona fide holder, if the indorsement was unauthorized.

Bonds.

The bond of a cashier of a national bank "for and during all the time he shall hold the said office" is held, in Westervelt *v.* Mohrenstecher (C. C. App. 8th C.) 34 L. R. A. 477, to cover defaults occurring in years subsequent to that in which it is given, notwithstanding the by-laws of the company provide that the cashier shall be elected annually and a resolution appointing him to the office was in fact passed each year.

A bond to insure the fidelity of a certain firm of persons as agents is held, in Standard Oil Co. *v.* Arnestad (N. D.) 34 L. R. A. 861, to be operative as security for the acts of the members of the firm only so long as they constitute a partnership, and not to cover the act of one of them after the partnership was dissolved, although the obligee did not know of the dissolution.

Power to issue bonds payable in gold coin of the United States of the present weight and fineness is held, in Burnett *v.* Maloney (Tenn.) 34 L. R. A. 541, not to be conferred upon a county by a statute authorizing the issue of bonds without prescribing the kind of money in which they may be paid.

Carriers.

The relations between a steamboat company and a passenger occupying a state room are held, in Adams *v.* New Jersey Steamboat Co. (N. Y.) 34 L. R. A. 682, to be those which exist between an innkeeper and his guest, and therefore the steamer company is held liable for the theft of money from the clothing of a passenger during the night while occupying a state room with door locked and windows fastened.

Prohibiting common carriers from contracting to limit their common-law liability is held, in Ohio & M. R. Co. *v.* Taber (Ky.) 34 L. R. A. 685, not to constitute any interference with the power of Congress to regulate interstate commerce, and a provision limiting the amount of liability for each animal that is carried is held to conflict with the constitutional provision against contracting for relief from the common-law liability of carriers.

The mere fact that a passenger was injured while attempting to pass from one car to another while the train was in motion was held, in McAfee *v.* Huidekoper (D. C. App.) 34 L. R. A. 720, insufficient to raise a presumption of his negligence.

Conflict of Laws.

A contract to pay money to a loan association at its place of business, made at an agency in another state by a resident of the latter, is

held, in Bennett v. Eastern Building & L. Asso. (Pa.) 34 L. R. A. 595, to constitute a contract of the state in which the corporation resides.

Constitutional Law.

The right of a citizen of any state to maintain in the courts of another state a transitory action arising at his residence against another citizen of the same state who is found in the state where the action is commenced is held, in Eingartner v. Illinois Steel Co. (Wis.) 34 L. R. A. 503, to be one of the privileges and immunities of citizens of the several states which are guaranteed by the Federal Constitution.

Corporations.

A decree in another state as to the amount of assets and debts of an insolvent mutual insurance company, including the amount of assessments necessary to liquidate its liabilities, is held, in Mutual F. Ins. Co. v. Phœnix Furniture Co. (Mich.) 34 L. R. A. 694, to be conclusive upon the stockholder when sued in another state upon a note for premium which was in the control of the court which made the assessment, although the court in which he is sued takes a different view of the case as to the assessments.

But it is held in Parker v. C. Lamb & Sons (Iowa) 34 L. R. A. 704, that an assessment on premium notes made by a receiver under a decree of the court is not an adjudication which is binding on the courts of another state as against the maker of one of such notes who was not a party to the proceedings resulting in the assessment, and who before the bankruptcy of the company had surrendered his policy and received back his note.

A stockholder's liability which is contractual under the statute is said, in Cushing v. Perot (Pa.) 34 L. R. A. 737, to become a part of the assets which pass to a receiver for the payment of corporate debts.

The liability of stockholders in a Kansas corporation to be sued in other states in a Federal court is sustained in Rhodes v. United States Nat. Bank (C. C. App. 7th C.) 34 L. R. A. 742, on the ground that the statutes of Kansas are construed by the state courts to create a personal liability in the nature of a contract obligation.

But in Tuttle v. National Bank of Republic (Ill.) 34 L. R. A. 750, and Marshall v. Sherman (N. Y.) 34 L. R. A. 757, a different view of the Kansas statutes is taken, and the enforcement of the statutory liability of stockholders in Kansas corporations is refused on the ground that the statutory remedy in Kansas is exclusive.

So in Russell v. Pacific R. Co. (Cal.) 34 L. R. A. 747, the court refused to enforce the statutory liability of a stockholder in an Illinois corporation for the same reason.

Counties.

The distinction between a county and a municipal corporation is emphasized in Schweiss v. District Court (Nev.) 34 L. R. A. 602, where it is held that a statute attempting to incorporate a county is void because it violates a constitutional provision for the uniformity of county governments.

The prohibition of county aid to any individual, association, company, or corporation is held, in Lancey v. King County (Wash.) 34 L. R. A. 817, to be inapplicable to county aid to a canal through the county constructed by the state or United States.

Courts.

The right of two members of the Tennessee court of chancery appeals to hear, consider, confer together, and decide cases in the absence of the other member of the court from sickness or other reason, is sustained in Cowan v. Murch (Tenn.) 34 L. R. A. 538, in harmony with the general statutory provision that a majority of three or more officers to whom joint authority is given may exercise it unless otherwise declared, although that statute does not apply to the court.

A conflict between courts in respect to the enforcement of their rules for attendance of attorneys was settled in Peterson v. Atlantic City R. Co. (Pa.) 34 L. R. A. 593, by holding that a judgment in a trial court against a party whose counsel was to the knowlege of the court then present in the supreme court of the state in obedience to its rule would not be permitted to stand.

Criminal Law.

The possibility of a deduction by good-time credits, although contingent upon the conduct of the convict, is held, in Howard v. United States (C. C. App. 6th C.) 34 L. R. A. 509, to

be insufficient to render a sentence indefinite or uncertain so as to make invalid a successive sentence to begin on the expiration of the former.

Death.

A husband's right of action for the loss of his wife's society on account of injuries which resulted in her death is held, in Louisville & N. R. Co. *v.* McElwain (Ky.) 34 L. R. A. 788, to be defeated by a recovery of judgment for her death in an action by her personal representative.

So, a right of action for damages resulting from death is held, in Lubrano *v.* Atlantic Mills (R. I.) 34 L. R. A. 797, to be exclusive of an administrator's right of action to recover for the pain and expense suffered by the intestate from the injuries which caused his death. With these cases are reviewed the different decisions on the question whether the causes of action for personal injuries and for death resulting therefrom are concurrent or alternative.

Electrical Uses and Appliances.

The utmost care to keep the insulation of dangerous electric wires perfect at places where people have a right to go for work, business, or pleasure is held necessary in McLaughlin *v.* Louisville Electric L. Co. (Ky.) 34 L. R. A. 812, although at other places very great care may be deemed sufficient. And the fact that the insulation of the wires is very expensive or inconvenient is no excuse for failure to make it perfect at points where people have a right to go for work, business, or pleasure.

Evidence.

The destruction by a servant of his employer's books after the latter's death is held, in Hay *v.* Peterson (Wyo.) 34 L. R. A. 581, to be insufficient to raise a presumption that they contained charges against the servant,—especially where they were not destroyed until after they had been examined and the servant claimed that in their destruction he was executing his employer's orders.

Food.

The injury of a person by eating unwholesome food at a restaurant is held, in Sheffer *v.* Willoughby (Ill.) 34 L. R. A. 464, to be insufficient to raise a presumption against the restaurant keeper that he was negligent or to make a prima facie case of liability on his part. But the person injured in order to recover damages must establish carelessness or negligence on the part of the restaurant keeper.

Fright.

Recovery for a miscarriage resulting from fright caused by negligence is denied, in Mitchell *v.* Rochester R. Co. (N. Y.) 34 L. R. A. 781, on the ground that the damage was not the proximate result of the negligence, although the court recognized the fact that the authorities on the question are not harmonious.

Homicide.

The crime of murder is regarded, in Debney *v.* State (Neb.) 34 L. R. A. 851, as having been committed when the fatal blow or wound is inflicted, although death occurs at a subsequent date, so that the party is to be tried by the laws in force at the time the injurious act is done.

Husband and Wife.

Habitual intemperance within the meaning of a statute authorizing a divorce for such cause is held, in Dennis *v.* Dennis (Conn.) 34 L. R. A. 449, not to be shown by proof of intoxication about once in three weeks, during the evening, to such an extent that the person did not go as usual to his work the next morning, and that this conduct had continued for about two years, but had not caused loss of position nor produced want or suffering in the family.

A provision against accommodation indorsements by married women is held, in Harrisburg Nat. Bank *v.* Bradshaw (Pa.) 34 L. R. A. 597, to be inapplicable to a renewal after marriage of an indorsement made before marriage.

The sale of laudanum as a beverage to a married woman, knowing that it is destroying her mind and body and causing loss to he husband, when continued after his repeated warnings and protests, is held, in Holleman *v.* Harward (N. C.) 34 L. R. A. 803, to render the seller liable to the husband for damages sustained by the loss of her services.

Imprisonment for Debt.

A statute making it a misdemeanor for a person to receive a deposit in a bank which he knew to be insolvent, and punishing it with a fine not less than double the amount deposited, one half of which should go to the depositor, and the payment of which before conviction should constitute a defense to the prosecution, is held, in Carr v. State (Ala.) 34 L. R. A. 634, to violate a constitutional provision against imprisonment for debt, since its purpose was clearly to force payment of the debt by the duress authorized.

But a statute making it a misdemeanor fraudulently to obtain accommodations at an inn, hotel, or boarding house, or fraudulently to remove baggage or other property therefrom, is held, in State v. Yardley (Tenn.) 34 L. R. A. 656, to be valid under such a constitutional provision.

Insurance.

Insurance against a tenant's loss when compelled to pay rent for a burned building is held, in Heller v. Royal Ins. Co. (Pa.) 34 L. R. A. 600, to be unaffected by any payment to the tenant from the landlord out of the proceeds of a policy held by the latter,—at least when the combined amounts will not wholly reimburse the tenant.

The lien of a mutual insurance company upon insured property of members for their shares of the losses and expenses of the company is held, in Farmers' Mut. Ins. Asso. v. Burch (S. C.) 34 L. R. A. 806, to be superior to thehomestead rights of a member, where a by-law provides that all the insured buildings and the right, title, and interest of the assured to the lands on which they stand shall be pledged to the company.

Gasoline kept as part of the usual stock of merchandise is held, in Yoch v. Home Mut. Ins. Co. (Cal.) 34 L. R. A. 857, to be insufficient to avoid a policy which by its printed clause prohibits the keeping of gasoline, but in its written description of the property insured named such stock "as is usually kept in country stores."

Landlord and Tenant.

An extinguishment of the liability for rent of leased premises by destruction of the property was declared in Wait v. O'Neil (C. C. App. 6th C.) 34 L. R. A. 550, where the lease included a river front and landing which consisted of a narrow footing at the base of the bluff, without any wharf, dock, or pier, and all the landing but a shallow fragment of the lot was washed away by the unprecedented ravages of the river, and then with the lessor's consent and participation works were constructed in front of the shore line which destroyed safe access to the landing.

A lease of the roof and outside of a party wall of a building projecting above the adjoining buildings, for the purpose of advertising thereon by means of a stereopticon, was in question in the case of Oakford v. Nixon (Pa.) 34 L. R. A. 575, and it was held that the lessee was not evicted and that the lease did not become invalid for want of consideration by the fact that the value of the wall for advertising purposes was destroyed by the tenant of the adjoining building, who rented the roof of his building, with a screen constructed thereon, to another party for the purpose of advertising.

Municipal Corporations.

The two thirds of the members of a branch of a municipal government, which are required by a rule of procedure on a vote to dispense with one of the regular readings of a proposed ordinance, are held, in Zeiler v. Central R. Co. (Md.) 34 L. R. A. 469, to be merely two thirds of the members voting, if they are not less than the majority and if the majority constitutes a quorum, and they need not be two thirds of all the members of the body.

The right of a municipal corporation which has contracted with a private corporation for a water supply, to erect waterworks of its own, is denied in White v. Meadville (Pa.) 34 L. R. A. 567, and it is held that the municipality must proceed to acquire the works of the private company if it wishes to own a plant of its own.

Negligence.

The owner of a building who has leased it as a place of residence is held, in McConnell v. Lemley (La.) 34 L. R. A. 609, to be not liable to a member of a surprise party visiting the tenant, who is injured by means of a falling gallery.

And, on the other hand, it is held, in Stenberg v. Willcox (Tenn.) 34 L. R. A. 615, that a landlord is liable to a boarder on premises leased for a boarding house for injuries caused by the unsafe condition of the premises which

was known, or might have been known, to the landlord by the exercise of reasonable care and diligence at the time of the lease, but was not known to the boarder.

An injury to a tenant from the unsafe and dangerous condition of leased premises known to the landlord, or which might, with reasonable care and diligence, have been known to him, but not to the tenant, is held, in Hines v. Willcox (Tenn.) 34 L. R. A. 824, to render the landlord liable, although the tenant examined the premises and did not discover the defect.

Although the owner of a building is not an insurer against accident from its condition, it is held, in Ryder v. Kinsey (Minn.) 34 L. R. A. 557, that he is bound to keep it in such condition, so far as he can by the exercise of ordinary care, that it will not, by any insecurity or insufficiency for the purpose to which it is put, injure any person rightfully in, around, or passing it. And the fall of the building without apparent cause will raise a presumption of the owner's negligence.

Parent and Child.

An adopted child is held, in Hartwell v. Tefft (R. I.) 34 L. R. A. 500, to be the "lawful issue" of the adopting parents within the meaning of a will making a gift to lawful issue, where the statute puts such child on the same footing as if born of such parents in lawful wedlock, except that he shall not take property expressly limited to the heirs of their bodies.

Poll Tax.

The sale of nontaxable property for payment of a poll tax which is made a lien only upon taxable property is denied, in Ratliff v. Beale (Miss.) 34 L. R. A. 472, on the very novel ground that the constitutional provision respecting such poll tax is not intended to be a means of revenue so much as a clog upon the franchise of colored persons.

Postoffice.

Notice by registered letter, provided for by statute in case of notice precedent to forfeiture of insurance policies, is held, in Ross v. Hawkeye Ins. Co. (Iowa) 34 L. R. A. 466, to be completed by due registration of the letter at the office from which it is to be sent; but the letter is held not to be registered for that purpose until it is numbered as required by the postal laws and regulations, although the postmaster has received it, properly addressed, and given a receipt therefor.

Public Improvements.

The exemption of a railroad roadbed from local assessments is held, in Philadelphia, McCann, v. Philadelphia & R. R. Co. (Pa.) 34 L. R. A. 564, not to extend to the whole of a strip 1,500 feet wide, although a large part of it is covered with tracks; and a sale of a railroad yard used as a coal and ore terminal to satisfy such a tax lien is permitted, but it is to be made subject to the easement of the company to operate its tracts.

A special tax on land in a levee district which is especially benefited by a levee is held, in Reelfoot Lake Levee Dist. v. Lawson (Tenn.) 34 L. R. A. 725, to be a tax within the constitutional provision requiring all property, real, personal, and mixed, to be taxed according to its value; and therefore a tax on land alone, but excepting land covered by water, is held unconstitutional.

Railroads.

Authority by the statutes of another state to a railroad company is held, in Van Steuben v. Central R. Co. (Pa.) 34 L. R. A. 577, to be insufficient to sustain a lease against the policy of the statutes of the state where the property is situated.

Replevin.

The right of a licensee who has paid full value for a license to cut and remove timber, to maintain replevin for it when wrongfully cut by a trespasser, is sustained, in Keystone Lumber Co. v. Kolman (Wis.) 34 L. R. A. 821.

Schools.

A reservation of the right to annul all contracts every four months stamped across the face of a contract with a school teacher is held, in Thompson v. Gibbs (Tenn.) 34 L. R. A. 548, to give the school directors no right to dismiss him without charges or notice or testimony, under a statute authorizing a dismissal "for incompetency, improper conduct, or inattention."

Statutes.

Failure to enter the yeas and nays on a legislative journal as required by a constitutional provision upon the second and third readings of an act authorizing the creation of municipal indebtedness is held, in Union Bank *v.* Commissioners of Oxford (N. C.) 34 L. R. A. 487, to render the statute void.

Street Railways.

The frightening of a mule caused by the usual noise incident to the running of a street car by electricity, without any unnecessary noise for the purpose of scaring the animal, is held, in Doster *v.* Charlotte St. R. Co. (N. C.) 34 L. R. A. 481, not to make the street railway company liable for the resulting damages.

Authority to a street-railway company to cross any railroad operated by steam is held, in Northern Cent. R. Co. *v.* Harrisburg & M. E. R. Co. (Pa.) 34 L. R. A. 572, to give power to cross only where the railroad is crossed by a street or high way.

Taxes.

The taxation of judgments rendered by the courts of the state in favor of and owned by citizens of other states is held, in Kingman County *v.* Leonard (Kan.) 34 L. R. A. 810, to be unauthorized by the existing statutes providing in general terms for the taxation of personal property, although the court does not deny the power of the legislature to provide for the taxation of such judgments.

Telegraphs.

Overruling a prior decision in the same state which permitted telegraph companies to contract against their own negligence, it is held, in Reed *v.* Western Union Teleg. Co. (Mo.) 34 L. R. A. 492, that a stipulation which would have that effect is invalid.

Towns.

That a town is included in the term "municipal corporations" is declared in Rathbone *v.* Hopper (Kan.) 34 L. R. A. 674, which sustains an issue of bonds by a town.

Trusts.

The right to revoke a deed of trust which has been executed by a person for the preservation of his property is held, in Neal *v.* Black (Pa.) 34 L. R. A. 707, to depend on the approval of the court.

Voters and Elections.

A statute prohibiting the name of any candidate for office from being placed more than once upon an official ballot is held, in State, Bateman, *v.* Bode (Ohio) 34 L. R. A. 498, to be a valid law violating no constitutional provision.

A candidate for a presidential elector is held entitled to but one place on an official ballot, in State, Blydenburgh, *v.* Burdick (Wyo.) 34 L. R. A. 845, under statutes which provide for no party headings or columns, but require the ballot to name the party or principle represented by a candidate in connection with his name.

New Books.

"Annotated Revised Statutes of Ohio." By Clement Bates. W. H. Anderson & Co., Cincinnati, Ohio. 3 Vols. $15.

"Practice Timetable." By H. Noyes Greene. Matthew Bender, Albany, N. Y. 1 Vol. $1.50.

"Digest of Virginia Reports." By R. M. Brown & Sam. N. Hurst. Hurst & Co., Pulaski, Va. 1 Vol. $5.

"Digest of Kentucky Reports." Vols. 3 & 4. By J. Barbour. John P. Morton & Co., Louisville, Ky. $16.

"Historical Development of Code Pleading." By Charles M. Hepburn. W. H. Anderson & Co., Cincinnati, Ohio. 1 Vol. Cloth, $3. Sheep, $3.75.

"Trial of Herman W. Mudgett, *alias* H. H. Holmes." Baker, Voorhis & Co., New York. $5.

Recent Articles in Law Journals and Reviews.

The Path of the Law.—10 Harvard L. Rev. 457.

Keener on Quasi-Contracts.—10 Harvard L. Rev. 79.

Incidents of Irregular Incorporation.—36 Am. L. Reg. & Rev. (N. S.) 161.

Roman Law in American Schools.—36 Am. L. Reg. & Rev. (N. S.) 175.

The Taxation of a Business Corporation in New York.—4 University L. Rev. 121.

Gambling Contracts.—6 Michigan L. J. 35.

Are Public Corporations Subject to Garnishment or Creditors' Suits?—55 Albany L. J. 153.

Mental Anguish in Telegraph Cases.—44 Cent. L. J. 176.

Liability of Common Carriers to Passengers Carried Gratuitously.—44 Cent. L. J. 205.

Negotiability of Guarantees.—44 Cent. L. J. 225.

Legal Holidays in Ohio.—3 Western Reserve L. J. 32.

Imputed Wrong as it Affects Railway Law.—44 Cent. L. J. 242.

Pleading Negligence.—55 Albany L. J. 215.

Right to Assignment or Reconveyance upon Redemption of Mortgage.—17 Canadian Law Times, 81.

Specific Denial in Pleading.—17 Canadian Law Times, 85.

The Present State of the Law.—31 Am. L. Rev. 161.

American Lawyers and Their Making.—31 Am. L. Rev. 177.

The Late Constitutional Convention and Constitution of South Carolina.—31 Am. L. Rev. 198.

Courts *versus* Clearing Houses.—31 Am. L. Rev. 213.

The Evolution of the American Fee Simple.—31 Am. L. Rev. 227.

Pooling Contracts and Public Policy.—31 Am. L. Rev. 236.

Lateral Support of Land.—31 Am. L. Rev. 247.

Constitutionality of the Illinois Torrens Land Transfer Act.—31 Am. L. Rev. 254.

Why Thomas Bram was Found Guilty.—9 Green Bag, 146.

The Legal Aspects of the Maybrick Case.—9 Green Bag, 185.

Beyond a Reasonable Doubt.—9 Green Bag, 97.

The Death Penalty in the United States.—9 Green Bag, 129.

Rambles through the Illinois Reports (continued).—14 Nat. Corp. Rep. 122, 153.

Criticism of Courts and Juries.—5 American Lawyer, 117.

The Humorous Side.

AN INCENTIVE TO CRIME.—A jury in Russia is said by the London "Law Notes" to have allowed a burglar to go free because the man whom he had robbed had refused to lend him money. "This in the opinion of the jury was a direct incentive to crime."

AT 6's AND 7's.—A recent announcement of a series of law reports says, "The next volume to be issued will be 6 and 7." This is a delicate touch. The grammar is made to harmonize nicely with the series of reports, both alike being at 6's and 7's.

"EVIL DISPOSED PARSONS."—There is a flavor of Merrie England in the days of rollicking parsons to be found in a recent law reporter which says that certain indictments charged defendant with keeping a disorderly house by suffering, procuring, and permitting "divers evil disposed parsons" to habitually frequent certain rooms under his control and there to be and remain and habitually engage in betting, winning, and losing money and other property on horse races to the common nuisance and annoyance of the good citizens of the commonwealth. This is getting back to the original identity of "parsons" and "persons."

THE SUCCESSORS OF ADAM.—A Southern judge who evidently sees too much of the old Adam in modern heads of families says:—"Husbands are so accustomed to their old and senile common-law prerogatives, which are slowly yielding to the nobler and more righteous enactments, that, as barons not quite shorn of their strength, they still talk egotistically of their *femes'* separate estates. They, in ordinary conversation, with a selfishness born of pride, cling to the exploded theory that whatever is my wife's is mine alone, for she is, and yet is not, for I am. We are two in one, and I am the one even though she supports me."

S-CAT-OLOGY.—The doctrine of "death, judgment, and the events connected therewith," which theologians call eschatology, has recently engaged the mind of Judge Jones, of Oldham, England, as we learn from memoranda of his decision in "Law Notes." A cat directly participated in events connected with the death of some chickens. In a suit by the owner of their remains against the owner of the cat a nonsuit was granted, holding that the owner of the cat need not answer for its deeds done in the body because the cat was neither a ferocious animal that needs to be shut up, nor a domestic animal for whose acts the owner is responsible, but is merely quasi-domestic. The chief ground of holding that the cat is not a domestic animal seems to have been that it will not take a walk with its owner, which leads "Law Notes" to ask, "How about a pig?"

From the Appellate Division

A large number of the judges of this new judicial tribunal in New York are constant users of the LAWYERS REPORTS ANNOTATED. Their judgment in the law may sometimes differ, but on the merits of these reports they are unanimous.

VAN BRUNT, Ch. J. 1st Dept.

"I have found them of the greatest service, as they must necessarily be to the working lawyer."

BROWN, Ch. J. 2d Dept.

"I consider the Lawyers' Reports, Annotated a most valuable addition to the reports of this state. The cases are well selected, the annotation is exceedingly well done, and represents a great amount of labor. They are of great assistance to the judge or practicing lawyer."

HATCH, J. 2d Dept.

"Your publications have furnished the means through which judicial labors have been much lightened, and very often the voluminous notes which accompany the selected cases point out the path by which a correct result is reached in the case in hand. If they were examined more frequently by the practicing lawyer, much labor would be saved for themselves and the courts."

HERRICK, J. 3d Dept.

"The briefs of counsel and the copious and careful notes render the series of great assistance in the investigation of questions presented to us. This series of reports is a great acquisition to any working library. They are valuable to the Judge upon the bench, and must be exceedingly useful to the practicing lawyer."

These reports give help on hard questions. The law of your state is settled on some points, but on new and perplexing questions you look for precedents to other states—at least the judges do. L. R. A. gives them. When a question is annotated you will find every case bearing on the point cited. Send for sample part.

The Lawyers Co-Operative Publishing Company
Rochester, N Y

Do the same for your neighbor.

It may be your brother lawyer has never heard of the LAWYERS REPORTS ANNOTATED — stranger things have happened. Put him under lasting obligations to you by calling his attention to your set. We are permitted to copy this letter:

"Let me say that the greatest service you have rendered us was in persuading us to get the LAWYERS REPORTS ANNOTATED. We use them continually. They save much time and labor.

FLOWER, SMITH & MUSGRAVE."
Chicago.

These reports give help on hard questions. One of their notes, which are exhaustive, may give you the clue which will enable you to win a doubtful case. Whatever subject is treated is exhausted. All the authorities to date are given — all the material for a brief is before you.

The Lawyers Co-Operative Publishing Co., Rochester, N. Y.

Damages by Corporations

By HON. GEO. E. HARRIS,

Author "Contracts of Married Women," "Certiorari," etc.

This is a work you will need very much some time. It will parallel some important case and tell you just what you want to know.

It treats generally upon the liability of corporations for injuries to persons or property, including in its scope cases *Damnum absque Injuria*. Specifically, it discusses injuries by Railroads, street and steam, by Connecting Lines, by Express, Telegraph, Mining, Banking, and Municipal Corporations; injuries to Children, Fellow-servants, Baggage, Live Animals, etc.; the right of Eminent Domain, law of Nuisance, Highways, etc., etc. Over 7000 cases are here cited, compared and quoted, and an appendix of statutes relating to injuries resulting in death is added.

2 Vols. 1500 pages.	Price, $11.00, net.

The Lawyers' Co-Operative Publishing Company, ROCHESTER, N. Y.

All case law of the United States 1789-1896 for $90

We can furnish a limited number of second-hand digest sets containing the above. The offer includes:—

U. S. Digest, 1st series, 15 vols.,
U. S. Digest, 2d series, 17, and the General Digest to date, 11 volumes:

43 volumes for $90 net.

This series constitutes a complete digest of American case law, State and Federal, from the beginning of the government to the present time, without omission or duplication. This can be said of no other series of digest now on the market. This offer applies only to sets now on our shelves. Therefore do not wait.

THE LAWYERS' CO-OPERATIVE PUBLISHING COMPANY ROCHESTER N Y

STANDARD SECOND-HAND REPORTS

The following reports have a fixed market value. They are all in good second-hand condition, and are bargains. Guaranteed as represented and delivered free if you send the price with order.

American Reports, 60 vols.,	$115.00
American & Eng. Corp. Cases, 48 vols.,	110.00
American & Eng. R. R. Cases, 61 vols.,	160.00
American Railway Reports, 21 vols.,	60.00
California Reports, 114 vols.,	228.00
Dakota Ty. Reports, 6 vols.,	24.00
English Chancery Reports, 69 vols.,	100.00
English Com. Law Reports, 118 vols.,	115.00
English Exchequer Reports, 47 vols.,	60.00
Kansas Reports, 29 vols.,	70.00
Kansas Reports, 54 vols.,	125.00
Michigan Reports, 108 vols. in 54 books, new,	108.00
Missouri Reports, 88 vols.,	210.00
Morrison's Mining Reports, 16 vols.,	60.00
N. Y. Court of Appeals Reports, 150 vols. in 62 books,	140.00
N. Y. Common Law Reports, 80 vols. in 75 books,	55.00
N. Y. Common Law Reports, 80 vols. in 39 books,	50.00
N. Y. Supreme Court, Barb., 67 vols.,	85.00
Pa. State Reports, 174 vols.,	230.00
U. S. Ct. of Claims, 28 vols. and Dig.,	60.00
Vermont Repts., 66 vols. in 17 books,	95.00
Wis. Rep., 91 vols., & Pinney, 3 vols.,	175.00

THE LAWYERS' CO-OPERATIVE PUBLISHING COMPANY ROCHESTER N Y

FROM EDITORIAL IN AMERICAN LAW REVIEW

"The New General Digest"

"The Lawyers' Co-operative Publishing Co., of Rochester, N. Y., have at last had the courage to make a new departure in their General Digest, by which they confine the annual volumes of that work to cases which have been officially reported. We said the 'annual' volumes, because heretofore they issued 'annuals.' But now their permanent volumes are to be *semi-annuals*. Their scheme is now this: To issue their temporary volumes, designed to keep abreast with the work of the courts, in the form of *Quarterlies*, bound in paper covers. These, if taken separately, are charged for at the rate of $4 a year, or $1 for each quarterly volume. Then, every six months, they will issue a permanent volume which will include no case which has not been officially reported, but which, of course, will embrace the latest cases which have been officially reported. These semi-annual volumes are sold at $6 each; but the subscriber to these semi-annual volumes gets the Quarterlies, or temporary volumes without extra charge. In other words, he gets the whole for $12 a year.

"This scheme is the most satisfactory scheme that has been or can be devised, from every point of view. It gives us the temporary digests of the latest work of the courts in the form of Quarterlies, which issue often enough, and which are much more convenient of search than the scattered pamphlets, which were previously issued semi-monthly, and which were continually being lost in the mails. For the purpose of being abreast temporarily with the work of the courts, a quarterly digest is issued often enough. Then, the semi-annual volumes give us the work of the courts with references to the official reports as that work finally stands, but with citations to all unofficial reports, including law journals, etc., where any particular case is to be found.

"It ought to be borne in mind that important English and Canadian cases are included in the General Digest. We have been put upon the track of some very important decisions of those courts on questions arising in equity jurisprudence, such as injunctions against trades unions, trademark cases, and the like, through the columns of the General Digest."

Such words from one of the highest American authorities are conclusive. We omit more with regard to editorial excellence equally complimentary. We will, however, for 50 cents (half price), send a sample Quarterly part, if you wish to examine for yourself; or we will send Vol 1, New Series, on approval, price $6 net.

THE LAWYERS' CO-OPERATIVE PUBLISHING COMPANY
ROCHESTER N Y